



STATE OF WEST VIRGINIA
DEPARTMENT OF HEALTH AND HUMAN RESOURCES

Earl Ray Tomblin
Governor

Bureau for Behavioral Health & Health Facilities

Commissioner's Office

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Karen L. Bowling
Cabinet Secretary

Dear Retailer:

The West Virginia Bureau for Behavioral Health and Health Facilities, Division on Alcoholism and Drug Abuse, is committed to protecting the health of young people in West Virginia. In our continuing effort to ensure that youth do not illegally purchase tobacco products, law enforcement personnel, in coordination with substance abuse prevention specialists/grantees, will be conducting random/unannounced federally-mandated inspections of tobacco retailers. These efforts are designed to better assure that there are no sales of tobacco products to youth under the age of 18. Clerks/Owners/Corporations found to be in violation will be cited according to **WV State Code, Chapter 16, §9A-2** (as amended March 2010). Citations issued to those in the above referenced categories for non-compliance with **WV State Code, Chapter 16, §9A-2** will be issued to the clerk individually, along with the store owner and/or Corporation. **WV State Code, Chapter 16, §9A-2** also specifies that subsequent violations at the same location or operating unit, firm, Corporation or individual will result in graduated penalties. **WV State Code, Chapter 16, §9A-2** (as amended March 2014) includes tobacco-derived and alternative nicotine product or vapor products relative to the sale of said products to persons under the age of eighteen.

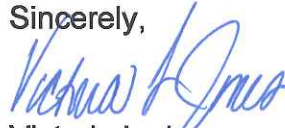
Enclosed please find merchant education materials, referred to as the '**See Red?**' Retailer Education Initiative, that will assist you in complying with **WV State Code, Chapter 16, §9A-2** (sale of tobacco products to youth under the age of 18). Per suggestions of retailers statewide, the **See Red?** material has been downsized to fit point of sale areas.

With the enactment of the Family Smoking Prevention and Tobacco Control Act, the U.S. Food and Drug Administration (FDA) **requires** that retailers verify the age of purchasers of cigarettes or smokeless tobacco who are under the age of 27 by means of photographic identification that contains the bearer's date of birth. For additional information on retailer requirements of the Family Smoking Prevention and Tobacco Control Act, log onto www.fda.gov/tobacco.

In addition, we are also enclosing the '**Under 21**' material that will assist your store personnel in the compliance of sale of alcohol to minor youth (persons under the age of 21). **WV State Codes, Chapter 11, §16-18 (Unlawful acts of licenses; criminal penalties); Chapter §6-3A-25 (Certain acts of retail licenses prohibited; criminal penalties), and Section §60-8-20a (Unlawful acts by persons)** address WV State laws relative to the sale or provision of alcohol to underage persons.

Thank you in advance for contributing to the State's tobacco prevention efforts by not selling tobacco products to youth under the age of 18. Your compliance with **WV State Code, Chapter 16, §9A-2** and **FDA's Family Smoking and Tobacco Control Act** will reduce the number of youth who have access to tobacco products and continue to help West Virginia in preserving federal funding for substance abuse prevention and treatment. We also thank you for making sure that your employees adhere to **WV State Codes, Chapter 11, §16-18, §3A-25, and §8-20a** that address the sale of alcohol to minor youth.

Sincerely,



Victoria L. Jones
Commissioner

VLJ:dm

Enclosures:

- ✓ **See Red?** Flyer
- ✓ **See Red?** Brochure
- ✓ Under 21 Flyer
- ✓ ID Required Sticker
- ✓ Register Stickers

A sale of tobacco products is allowable if a person presents a state or federally-issued photo identification (including but not limited to a driver's license, a non-operator's ID card, or military ID) which appears to be issued to the individual presenting the ID and indicates that they are at least 18 years of age. An expiration date on the identification refers to the purpose for which the identification was issued and *does not* prevent it from being used for identification purposes for tobacco-only sales. However, many corporate entities and owners have set their policy that if presented with a license with a red background, they are not to sell to the youth until they return with the renewed license (with a blue background). That policy is solely the discretion of the corporation/store owner.

Should any employer discover that his or her employee has sold or furnished tobacco products to minor youth, the employer may dismiss such employee for cause. Any such discharge shall be considered as 'gross misconduct' for the purpose of determining the discharged employee's eligibility for unemployment benefits in accordance with provisions of Section Three, Article Six, Chapter Twenty-one of *WV State Code Chapter 16, §9A-2* (amended March 2010), if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in their termination from employment.

WV State Code was amended (March 2014) to include tobacco-derived and alternative nicotine product or vapor products relative to the sale of said products to persons under the age of eighteen.

Sale of Alcohol – The background of a WV Driver's license or non-operator ID is **BLUE** for anyone between the ages of 18 and 21. The license or non-operator ID issued to a person between the age of 18-21 shows the date the person turns 21 in the upper right-hand corner – '21st date of birth'. Any date before the date listed as their 21st birthday means that the person is not old enough to buy alcohol. When you see a **BLUE** background on a WV driver's license or non-operator ID, look at the date to make sure the person is 21.

For further information on tobacco compliance resources, please visit our website at http://www.dhhr.wv.gov/bhhf/resources/Pages/DADA_resources.aspx

WHAT RETAILERS CAN DO

- **Educate** your employees on WV Statutes (WV State Code Chapter 16, §9A-2) pertaining to tobacco use and WV Statutes (WV State Code Chapter 11, §16-18; WV State Code Chapter 60, §3A-25; and WV State Code Chapter 60, §8-20a) pertaining to laws concerning the sale or provision of alcohol to underage persons and the financial consequences of their non-compliance.
- **Train** employees on how to comply with the law and support their efforts.
- **Engage** employee commitment. Set aside time for your employees to read the enclosed materials and make sure they understand them and have them sign a written notice that they understand that selling tobacco products to a minor youth may result in their termination from employment.
- **Display** the enclosed 'See Red?' materials as a reminder to your employees. The materials assist clerks in easily identifying those WV customers who are under the age of 18.
- Display the enclosed 'Under 21' materials as a reminder to your employees. The materials assist clerks in easily identifying those WV customers who are under the age of 21 relative to the purchase of alcohol.
- Contact **Biddy Bostic**, Senior Behavioral Health Specialist, **SYNAR Compliance Inspections** for additional education information relative to tobacco compliance (304-356-4795).

NOTE TO EMPLOYERS

Sale of Tobacco --The background of a WV Driver's license or a WV-issued Non-Operator ID is **RED** for anyone under 18. They are also positioned vertically. In the upper right-hand corner is listed the 18th and 21st birthdays for that youth. Again, if a youth tries to purchase a tobacco product before the date listed as their 18th birthday, it means that the youth is not old enough to purchase tobacco products. **When you see a red background on the license or non-operator ID, that's a red flag to carefully look at the date of birth.**

While some youth may not have yet had the opportunity to renew their license as soon as they turn 18, should a clerk be presented with a license with a red background, make sure they check the date. If the date shown is the youth's 18th birthday or after, it is legal for the clerk to sell.